

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**APR 6 2000**

**PATRICK FISHER**  
Clerk

TERRY W. DOWDY,

Petitioner-Appellant,

v.

RICK HUDSON,

Respondent-Appellee.

No. 99-6163  
(D.C. No. 98-CV-1512-A)  
(W.D. Okla.)

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**ORDER AND JUDGMENT** \*

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Before **KELLY** , **HENRY** , and **MURPHY** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Petitioner seeks a certificate of appealability from the district court's order denying his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and he seeks leave to proceed in this matter in forma pauperis. Petitioner's motion to proceed in forma pauperis establishes that he is indigent, so such leave shall be granted. To obtain a certificate of appealability petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Based upon our review of petitioner's appellate brief and the record as a whole, we conclude that petitioner has failed to make such a showing.

Accordingly, petitioner's motion for leave to proceed in forma pauperis is GRANTED. Petitioner's application for a certificate of appealability is DENIED for substantially the reasons given by the magistrate judge in his report and recommendation of February 3, 1999, and the appeal is DISMISSED.

Entered for the Court

Michael R. Murphy  
Circuit Judge